

**RADIOACTIVE
and
HAZARDOUS MATERIALS
COMMITTEE**

**2003
INTERIM REPORT**

**DECEMBER 2002
LEGISLATIVE COUNCIL SERVICE
411 STATE CAPITOL
SANTA FE, NM 87501**

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Radioactive and Hazardous Materials Committee - 2003 Interim Report

Work Plan, Meeting Schedule & Budget

**2003 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

The Radioactive and Hazardous Materials Committee was created by statute in 1979 to provide a means of coordinating information exchange and develop appropriate state actions in relation to the construction of the Waste Isolation Pilot Plant (WIPP) near Carlsbad. The name of the committee was changed in 1983 and again in 1986 to more accurately reflect the scope of the committee's work, which was broadened by the legislature in 1981, 1986 and 1991. Over the years, the committee has served as a de facto interim committee on the environment in lieu of the formal creation of another committee to deal with environmental issues. For example, in addition to the committee hearing testimony on the progress of the opening of WIPP, it has received testimony on federal water quality and air quality laws enforced by the state, solid waste landfill closures and openings, the potential siting of an interim, high-level radioactive waste facility on the Mescalero Apache reservation and pipeline safety. Some members of the committee have suggested that it become the interim oversight committee for the Department of Environment.

The committee members are:

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Sen. Phil A. Griego
Rep. Manuel G. Herrera

Sen. Gay G. Kernan
Sen. Don Kidd
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

Advisory Members:

Rep. Thomas A. Anderson
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne

Sen. John Pinto
Rep. Avon W. Wilson

During the 2003 interim, the committee proposes to gather information and hear testimony:

(1) on the organization and structure of the department of environment; its plans and objectives; its budget; and how it intends to do business with industry and governmental entities in New Mexico;

(2) from various industries and communities throughout New Mexico, including manufacturing, mining and agriculture, and from cities and counties on their interaction with the department of environment, the timeliness of permits, oversight issues and environmental impacts;

(3) on whether the safety and efficiency of oil and gas pipelines would be enhanced by moving oversight and regulation responsibilities from the public regulation commission to the oil conservation division of the energy, minerals and natural resources department; and

(4) on the status of WIPP and its RCRA permit modifications; and the status of RCRA permits for Los Alamos national laboratories.

The committee also plans to visit the WIPP site and to recommend legislation or, if deemed necessary, changes to existing legislation.

PROPOSED 2003 SCHEDULE AND BUDGET

One-day meeting in Santa Fe (June 13)	\$ 2330.12
Two-day meeting in Santa Fe (August 27-28)	5,370.72
Two-day meeting in Carlsbad (September 24-25)	<u>4,647.84</u>
TOTAL	\$ 12,348.68

*The total does not include expenses for advisory members of \$3,936.96.

Agendas

TENTATIVE AGENDA
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

June 13, 2003
Room 309, State Capitol

Friday, June 13

9:30 a.m.	CALL TO ORDER — Representative John A. Heaton, Chair
9:35 a.m.	DEVELOPMENT OF MEETING SCHEDULE AND WORK PLAN FOR THE 2003 INTERIM — Committee Members
10:30 a.m.	DEPARTMENT OF ENVIRONMENT OVERVIEW OF REORGANIZATION AND OBJECTIVES — Ron Curry, Secretary
1:00 p.m.	ADJOURNMENT

**TENTATIVE AGENDA
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**August 27-28, 2003
Rooms 322 and 317
State Capitol**

Wednesday, August 27 — Room 322

- 9:30 a.m. CALL TO ORDER
 —Representative John A. Heaton, Chair
- 9:35 a.m. ENVIRONMENTAL CONCERNS
 —Francisco Apodaca, Amigos Bravos and Mining Impact
 Communication Alliance
 —Jean Garcia, Executive Director, Chaparral Community Health Council
 —Robby Rodriguez, Organizing Coordinator, SouthWest Organizing
 Project
 —Tweeti Blancett, Blancett Ranches and Oil and Gas Accountability
 Project
- 10:05 a.m. NM CATTLE GROWERS' ASSOCIATION, NM FARM AND
LIVESTOCK BUREAU, DAIRY PRODUCERS OF NM
 —Caren Cowan, Executive Director, NM Cattle Growers' Association
 —Cecilia Abeyta, Government Affairs Specialist, NM Farm and
 Livestock Bureau
 —Sharon Lombardi, Executive Director, Dairy Producers of NM
- 10:40 a.m. NM COTTON-GINNERS ASSOCIATION
 —Richie Wilson, President, NM Cotton-Ginners Association
 —Ed Hughs, Agriculture Research Service, US Department of Agriculture
- 11:00 a.m. NM OIL AND GAS ASSOCIATION, NAVAJO REFINING
 —Deborah Seligman, Director of Governmental Affairs, NM Oil and
 Gas Association
 —Phillip Youngblood, Director of Environmental Affairs, Navajo
 Refining
- 11:30 a.m. MUNICIPAL LEAGUE, NM ASSOCIATION OF COUNTIES
 —Robert Gallegos, NM Municipal Environmental Quality Association,
 Municipal League
 —Dennis Holmberg, Lea County Manager
 —Les Montoya, San Miguel County Manager
 —Mark Turnbough, PhD, Waste Connections, Inc.

12:00 noon	LUNCH
1:30 p.m.	INTEL CORPORATION —Barbara Brazil, Public Affairs Manager for NM Operations —Bill Westmoreland, Senior Environmental Engineer
2:00 p.m.	NM HOMEBUILDERS ASSOCIATION, NM MANUFACTURED HOUSING ASSOCIATION —Jack Milarch, Executive Vice President, NM Homebuilders Association —Mark Duran, Executive Director, NM Manufactured Housing Association
2:30 p.m.	NM PETROLEUM MARKETERS' ASSOCIATION —Rueben Baca, Executive Director
3:00 p.m.	NM MINING ASSOCIATION —Mike Bowen, Executive Director
3:30 p.m.	SOUTHWEST DRYCLEANING ASSOCIATION —Jan Stevenson, Board Member, SW Drycleaning Association
4:00 p.m.	RECESS

Thursday, August 28 — Room 317

9:00 a.m.	ASSOCIATION OF COMMERCE AND INDUSTRY —J.D. Bullington, Vice President, ACI —Richard Virtue, Vice Chairman, ACI Environment Committee
9:30 a.m.	NM RESTAURANT ASSOCIATION —Carol White, Chief Executive Officer
10:00 a.m.	NM DEPARTMENT OF ENVIRONMENT: UPDATE ON SUPERFUND SITES —George Schuman, Superfund Program Manager
12:00 noon	LUNCH
1:00 p.m.	TRU WASTE CHARACTERIZATION ISSUES —Dr. Triay, Department of Energy, Carlsbad Field Office

- 1:30 p.m. LOS ALAMOS NATIONAL LABORATORY: ENVIRONMENTAL PROGRAMS OVERVIEW
—Barbara Stine, Deputy Associate Director of Operations
—Ken Hargis, Principal Deputy Division Leader, Risk Reduction and Environmental Stewardship
—Tori George, Deputy Project Director, Environmental Management Services
- 2:05 p.m. LOS ALAMOS NATIONAL LABORATORY: REMEDIATION AND WASTE MANAGEMENT
—Dave McInroy, Deputy Project Director, Remediation Services
—Chris Del Signore, Deputy Project Director, Project 2010
—Tony Stanford, Division Leader, Facility and Waste Operations
- 2:40 p.m. LOS ALAMOS NATIONAL LABORATORY: RELATIONSHIP WITH NM DEPARTMENT OF ENVIRONMENT
—Beverly Ramsey, Division Leader, Risk Reduction and Environmental Stewardship
- 3:00 p.m. NM DEPARTMENT OF ENVIRONMENT: PERMITTING AND ORDER ISSUES, RELATIONSHIP WITH LANL
—Sandra Martin, Acting Bureau Chief, Hazardous Waste Bureau
—James Bearzi, Pollution Prevention Program
—Charles Lundstrom, Director, Water and Waste Management Division
- 4:30 p.m. ADJOURNMENT

**TENTATIVE AGENDA
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**September 24-25, 2003
Pecos River Village Conference Center
711 Muscatel Ave.
Carlsbad**

Wednesday, September 24

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| 9:30 a.m. | CALL TO ORDER
—Representative John A. Heaton, Chair |
| 9:35 a.m. | CENTER OF EXCELLENCE FOR HAZARDOUS MATERIALS
MANAGEMENT REPORT
—Dr. Alan Moghissi, President, Institute for Regulatory Science
—Wren Stroud, Manager, Western Office, Institute for Regulatory
Science |
| 10:00 a.m. | WASTE ISOLATION PILOT PROJECT (WIPP): STATUS, PERMITS,
UPDATES, MODERN PIT FACILITY
—Dr. Ines Triay, Manager
—Roger Nelson, Chief Scientist |
| 11:00 a.m. | NEW MEXICO DEPARTMENT OF ENVIRONMENT: WIPP STATUS,
PERMITS, UPDATES
—Ron Curry, Secretary
—Tracy Hughes, General Counsel
—Sandra Martin, Acting Program Manager
—Steve Zappe, Project Leader |
| 12:00 noon | LUNCH |
| 1:30 p.m. | ENVIRONMENTAL EVALUATION GROUP
—Matthew Silva, Director |
| 2:00 p.m. | TECHNOLOGY COMMERCIALIZATION INTERNATIONAL
—Roy Brown, Vice President for Research and Development |
| 2:30 p.m. | UPDATE ON ACTINIDE CHEMISTRY EXPANSION
—Ned Elkins, Los Alamos National Laboratory, Carlsbad |
| 3:00 p.m. | PERFORMANCE ASSESSMENT REVIEW
—Paul Shoemaker, Sandia National Laboratories, Carlsbad |
| 3:30 p.m. | RECESS |

Thursday, September 25

9:30 a.m.	CARLSBAD ENVIRONMENTAL MONITORING AND RESEARCH CENTER, NMSU: TOUR OF CENTER, 1400 UNIVERSITY DRIVE —Deborah Moir, Associate Director
10:30 a.m.	CARLSBAD FIRE DEPARTMENT: UPDATE ON EMERGENCY RESPONSE TRAINING CENTER —Mike Reynolds, Fire Chief
11:00 a.m.	SMALLEY FOUNDATION ON PIPELINE SAFETY —Peter Esposito, Chief Executive Officer —Dwight Haddock, President
12:00 noon	LUNCH
1:30 p.m.	OFFICE OF PIPELINE SAFETY, U.S. DEPARTMENT OF TRANSPORTATION —Augustine Lopez, State Liaison
2:30 p.m.	ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, OIL CONSERVATION DIVISION —Lori Wrotenbery, Director
3:00 p.m.	PUBLIC REGULATION COMMISSION —David King, Commissioner —Bruno Carrara, General Manager, Pipeline Safety Bureau —Joe Johnson, Senior Pipeline Safety Engineer
4:00 p.m.	ADJOURNMENT

Revised: November 13, 2003

**TENTATIVE AGENDA
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**November 14, 2003
Room 311
State Capitol**

Friday, November 14

10:00 a.m.	CALL TO ORDER —Representative John A. Heaton, Chair
10:05 a.m.	CONSIDERATION OF LEGISLATION: PROPOSAL TO ELIMINATE DE NOVO HEARINGS
10:30 a.m.	PROPOSAL FOR APPROPRIATION TO STUDY AIR QUALITY STANDARDS
11:00 a.m.	CONSIDERATION OF LEGISLATION: PROPOSAL TO COLLECT FEES FOR PIPELINE SAFETY
12:00 noon	ADJOURNMENT

Minutes

**MINUTES
of the
FIRST MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**June 13, 2003
Santa Fe**

The first meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative John A. Heaton, chair, at 9:30 a.m. in Room 309 at the State Capitol.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Mary Jane M. Garcia
Sen. Don Kidd
Sen. Carroll H. Leavell
Rep. Antonio Lujan

Advisory Members

Rep. Thomas A. Anderson
Rep. Avon W. Wilson

Sen. William H. Payne
Sen. John Pinto

Staff

Maha Khoury
Cenissa Martinez

Guests

The guest list is located in the meeting file.

Committee Business

Representative Heaton welcomed committee members and guests. Committee members and staff introduced themselves. The committee discussed the work plan, agenda items and dates. The chair asked for input from the audience. James Bearzi, Hazardous Waste Bureau chief, indicated that the Department of Environment (ED) would like to present legislation to the committee. Joni Arends of Concerned Citizens for Nuclear Safety stated the organization's support for Senate Bills 514, 515, 781 and 782, which were introduced last legislative session.

The committee recessed from 10:10 a.m. to 10:25 a.m.

New Mexico Department of Environment

Ron Curry, secretary of environment, introduced several staff members in the audience and gave some personal history. Secretary Curry described the top four priorities of the department set forth in the handout. He described how fiscal responsibility did not exist when he and his staff came into the department. They changed the cash and budgeting process and reduced costs so there is more money in the programs. There used to be no docket schedules for attorneys and attorneys would simply pick cases they were interested in without direction. Now, there is a docket, priorities and direction given to the attorneys. Tracy Hughes, general counsel, briefly described the process.

Secretary Curry discussed the three Department of Energy (DOE) facilities: Los Alamos National Laboratory (LANL), Sandia National Laboratories (SNL) and the Waste Isolation Pilot Project (WIPP). The department is working with all three facilities. LANL takes the most staff, legal and press time and is the most difficult to work with, partly because LANL answers to two bosses (the National Nuclear Securities Administration and DOE) and also because it needs to become a "good environmental citizen". As far as working with the facilities, WIPP is the most aggressive in complying with ED requirements, SNL is second and LANL is a distant third. Senator Martinez informed LANL representative William Heimbach, who was in the audience, to take notice of ED's claims about LANL. Secretary Curry added that ED is involved in lawsuits with SNL and LANL and hopes to negotiate settlements.

Secretary Curry described the importance of enforcement to protect the environment and health of citizens. The department needs to be timely and a good regulator. The Green Zia program will focus on small businesses and show them how to minimize waste. Department staff will go into chambers of commerce and associations to build a better working relationship with small businesses.

Committee members discussed specific concerns with Secretary Curry concerning Mora County and Pecos, mining in Grant County, Phelps Dodge issues, agreements and bonds, and superfund sites. Secretary Curry stated that the department will try to negotiate agreements and eliminate discord so that it can start implementing cleanup at superfund sites. There is too much money going into consultants and attorneys instead of remediation of the sites. Chairman Heaton was concerned about the department's budget and adequate funding. Secretary Curry discussed the department's three sources of funding, namely DOE, the state and 15 funds the department manages and spends, and indicated that budget requests will be clearer in the future. He stated that the budget is complicated and inadequate. Secretary Curry then asked various directors in the department to explain what they do.

Jim Norton, director, Environmental Protection Division, described the four bureaus in his division, namely air quality, occupational health and safety, petroleum storage tanks and solid waste. He briefly described the Corrective Action Fund, the fund from gasoline sales, and cleanup of underground and above-ground storage tanks. Ana Marie Ortiz, J.D., is director of the Field Operations Division. There are 23 field offices in four districts in the state. The Field Operations Division inspects restaurants, pools and spas, provides liquid waste and burn permits, and contains the Drinking Water Bureau (there are 1,300 drinking water systems) and the

Radiation Control Bureau. Rick Martinez, director, Administrative Services Division, stated that the department is helping rural communities to become eligible for drinking water funding. Charles Lundstrom, director of the Water and Waste Management Division, oversees the DOE Oversight Bureau, Hazardous Waste Bureau and Surface and Groundwater Quality Bureau. Mr. Lundstrom stated that his division is reviewing and addressing problems with the permitting process, including permits for the dairy industry.

Department representatives stated they are reaching out and meeting with communities, activist groups and businesses and keeping everything transparent. Discussions ensued about burn permits, water and adjudication systems and how to address Title V issues and Environmental Protection Agency standards.

Leo Wilson, from the audience, of the Utility Operator Certification Advisory Board, invited the committee members and department representatives to attend the board's meetings.

Representative Heaton thanked Secretary Curry and all representatives from ED for their informative and succinct presentations and expressed his confidence in the vision and ability of the department to provide accountability and advance the mission entrusted to it by the state.

The committee adjourned at 12:45 p.m.

**MINUTES
of the
SECOND MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**August 27-28, 2003
Room 322, State Capitol
Santa Fe**

The second meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative John A. Heaton, chair, at 9:35 a.m. in Room 322 at the State Capitol.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Don Kidd (August 27)
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan

Advisory Members

Rep. Thomas A. Anderson
Sen. Clinton D. Harden, Jr. (August 28)
Rep. Avon W. Wilson

Sen. William H. Payne
Sen. John Pinto

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Elizabeth Holmes

Guests

The guest list is in the meeting file.

Wednesday, August 27
Committee Business

Representative Heaton welcomed committee members and guests. Committee members introduced themselves. Representative Heaton invited Douglas Meiklejohn to speak.

Amigos Bravos and Mining Impact Communication Alliance

Francisco Apodaca stated that his and his staff's experience with the New Mexico Department of Environment (ED) has been good. ED is helpful and knowledgeable. The problems he sees are not at the staff level but at the decision-making and administrative levels, such as in negotiations with Phelps Dodge. He feels that a lot of decisions are politically driven and are not based on the best science as set out by the staff. A discussion ensued on the agreement between the state and Phelps Dodge.

Chaparral Community Health Council

Jean Garcia spoke on issues with the landfill permit in Chaparral granted by ED to Rhino Environmental Services, Inc. She discussed problems with ED's public hearing process and ED's apparent lack of concern for community and citizen input. Chaparral has three other landfills. She stated that Chaparral is a poor, minority community that is being discriminated against. Representative Lujan stated that he was present at part of the hearing complained about and agreed that citizen and community voices are not heard. Tracy Hughes, general counsel for ED, stated that ED does not have any rules on economic or community impacts and is required by law to grant permits as long as zoning and local laws allow. ED is looking for ways to change this. A discussion developed regarding environmental justice. Derrith Watchman-Moore, deputy secretary of ED, stated that the issue is being looked at nationally and in New Mexico. ED is beginning a study in October on stakeholder community groups and will have a national expert speak on environmental justice. After the study, recommendations for change in legislation may be made. Representative Heaton asked ED to address the Chaparral and Questa mine issues and submit a report to the committee.

Southwest Organizing Project

Robby Rodriguez discussed air quality issues related to Intel. He feels the air permit is not enforceable and that there are no emission limits. He stated that the community wants to participate and be included in the discussions and hearings but that ED stifles the process. Committee members questioned Mr. Rodriguez about the scientific basis, if any, for his claims on air emissions by Intel.

Blancett Ranches and Oil and Gas Accountability Project

Tweeti Blancett, a rancher, described the wealth of natural resources in New Mexico; for example, over \$2.4 billion in resources was extracted and exported from the northwestern part of the state. She stated that New Mexico has over 35,000 natural gas wells with compressors that are totally unregulated. These wells affect the watershed and cause erosion, air pollution and surface damage problems. Ranchers are coming together with environmentalists on oil and gas well issues. Many companies that drill gas are not local and are not regulated. Problems are starting to brew in this area. A discussion ensued on the nature of the relationship between states on environmental issues. The committee requested ED to provide a short brief on the nature of state-to-state relationships.

New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau and Dairy Producers of New Mexico

Caren Cowan of the New Mexico Cattle Growers' Association discussed ED hearings and the arduous task of the triennial review. Cecilia Abeyta of the New Mexico Farm and Livestock Bureau stated that the economic value of agriculture in New Mexico is \$3.51 billion. It is regulated for clean air and water and the bureau supports those regulations. Members of the bureau would like to participate in the process of developing regulations and making policy. Sharon Lombardi of the Dairy Producers of New Mexico discussed the economic impact of the dairy industry and described the various state agencies that regulate the industry. She described ED's regulation of dairy. Dairy producers would like to be involved in the process. It would be easier for the industry if state and federal regulations were combined into one process. A discussion took place on ground water regulations and water quality, on using manure as biomass and on streams. The committee requested ED to brief the stream issues.

New Mexico Cotton-Ginners' Association

Richie Wilson, president, and Ed Hughs, United States Department of Agriculture, provided an update on House Bill 192. They have been meeting with ED on regulations since the bill was signed into law and have had excellent cooperation. Some of the issues they are working with are: modeling, developing background information for the environmental improvement board (EIB) January meeting, demonstrating compliance with federal and state standards and addressing pollutant impacts from cotton gins.

New Mexico Oil and Gas Association (NMOGA) and Navajo Refining

Deborah Seligman, Louis Rose and another representative from NMOGA discussed how the association and its members are committed to protecting public health and the environment. Regulations and policies must consider industry input and identify goals while leaving the "how" to the industry. They discussed volatile organic compounds (VOCs), ozone level issues and the task force in northwestern New Mexico. They stated the industry's position on the VOC and ozone level issue, including the burdens on the industry. The association has had discussions with ED and believes it can work with ED to draft the right rules and policies. Phillip Youngblood of Navajo Refining supported the NMOGA. Navajo Refining is regulated by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department as well as ED. Its relationship with ED is good, much better than it was three or four years ago. Mr. Youngblood then gave a more detailed description of what Navajo Refining does, its interactions with the various bureaus in ED and its compliance with the consent decree. Some staff at ED are very qualified, others are not. If ED had more funding, it could recruit more qualified people. A discussion ensued on the need for better funding for ED so it can hire and retain technical staff and qualified people. Mr. Rose discussed with the committee the problem with the EIB and the Water Quality Control Commission (WQCC) having lay members who do not understand a lot of science and not having an independent scientific staff. They need to have more accountability. They are unpredictable. Also, the turnover problem at ED is expensive to the industry. Representative Heaton suggested that ED, the industry and the environmentalists each do a brief on this issue so the legislature can better understand the problems.

Committee Business

The committee approved the minutes of the last meeting and recessed for lunch from 12:25 p.m. to 1:45 p.m.

Municipal League and New Mexico Association of Counties

Dennis Holmberg, Lea County manager, discussed landfill issues and procedures. The county has a good relationship with ED. ED inspects on a regular basis and, due to its help, the county has a profitable landfill. ED has also helped with convenience centers. Les Montoya, San Miguel County manager and member of Sangre de Cristo Solid Waste Authority, described how ED helped with Mora County's solid waste system and stated that ED is fair and consistent and communicates well on compliance issues. He then described the problem of illegal dump sites on private property. Robert Gallegos, New Mexico Municipal Environmental Quality Association, described the five topics of immediate concern to the association, namely, the federal Safe Drinking Water Act, the new arsenic standard, public health security and bioterrorism, WQCC's standard for uranium and New Mexico operator certification. He went over his presentation as set out in the meeting file. Mark Turnbough of Waste Connections, Inc., helped chair the governor's transition team for ED. He described the transition process. The team found ED to be underfunded and understaffed and found problems with the office of general counsel. Things are starting to shape up. There is a big meeting of the entire department and problems are getting addressed. General counsel is more aggressive and is making decisions faster. The hearing process should be looked at more. A discussion ensued on the hearing process, problems in procedure and appeals and de novo hearings.

Intel Corporation

Barbara Brazil and Bill Westmoreland stated that Intel's primary interaction with ED is with the Air Quality Bureau. The process needs to be better identified and the timing needs to be predictable. ED is making progress in understanding the technical and complicated technology that Intel is involved in. A discussion took place on the types and amounts of chemicals released by Intel and how Intel can respond to the concerns of the community and be more transparent.

New Mexico Homebuilders' Association

Jack Milarch, executive vice president, discussed septic tank issues and how ED may be understaffed. The dedicated fund for septic tank issues does not seem to be applied there. ED needs to address and clean up old and noncompliant septic tank systems. The association has members who have put in long hours and worked with ED. Another issue is storm water runoff subjecting members of the association to fines from Texas-based U.S. Environmental Protection Agency (EPA) inspectors. They seem to be caught between overworked and understaffed ED and federal regulators with a bad attitude. Ken Smith, ED, stated that ED was expanding its septic tank program. ED was asked to respond as to whether earmarked funds are being used for the purpose created.

New Mexico Petroleum Marketers' Association

Rueben Baca, executive director, stated that ED regulates under- and above-ground storage tanks. It had a backlog but is catching up. A discussion took place on the underground storage tank inspection program.

SW Dry-Cleaning Association

Troy Bradley of Comet Cleaners gave some personal history and discussed how dry-cleaning chemicals are mixed. ED is professional, knowledgeable and handles things well. The association deals with the Air Quality Bureau. Smaller operations seem to have more problems with chemical use and disposal and may not be as inspected as the larger companies.

Recess

The committee recessed at 4:10 p.m.

Thursday, August 28

The committee reconvened at 9:05 a.m. in Room 317 at the State Capitol.

Association of Commerce and Industry

J.D. Bullington and Richard Virtue requested that House Bill 655, carried by Representative Heaton, be reintroduced to amend the Air Quality Act to eliminate the requirement of a second de novo hearing. A discussion on the bill, present procedures and costs ensued between Mr. Virtue, committee members, Secretary of Environment Ron Curry and Tracy Hughes, general counsel to ED. ED is willing to compromise and work with business and environmental groups. A second issue discussed by Mr. Virtue was conflict resolution before ED, especially when there is a change in policy or interpretation. Examples were given. An interim procedure is needed, perhaps an informal hearing or mediation. Mr. Virtue further suggested that the statute of limitations imposed on the Air Quality Act in 2001 should be applied to the Water Quality Act and the Hazardous Waste Act. ED is administratively recognizing a one-year limitation.

New Mexico Restaurant Association

Carol White, executive director, stated that members of her association work well with ED. ED is very professional but its employees are overworked and underpaid. Last session, the association supported a fee increase for ED. Three thousand restaurants are inspected across the state. A discussion took place on earmarked funds, bad cash management and how lack of adequate funding forces the department to use funds for other than their intended purpose. Rick Martinez, Administrative Services Division director, ED, explained problems with special funds and stated that there are around 50 vacant positions in ED due to lack of funding. ED needs general fund money to fill these positions and to match federal funding.

Update on Superfunds

George Schuman, ED, superfund program director, went over the handout describing the 12 superfunds in New Mexico, their causes, locations, progress of cleanup efforts and cleanup goals, processes and measurement. Discussions ensued on specific superfund sites, such as those in Espanola and Roswell, on dry-cleaning solvents and on liability of property owners. Mr. Schuman described the decrease in federal funding for superfund sites nationally. Representative Ponce moved to send letters on the superfund sites individually and as a

committee to congressional delegates. Senator Martinez seconded the motion. ED will draft the letters.

New Mexico Mining Association

Mike Bowen, executive director, stated that the mining industry is regulated in numerous ways by ED, including air, water, financial, waste, storage tanks and remediation, and is regulated by other agencies as well. Environmental regulation has a substantial economic impact on mining and requires hundreds of millions of dollars from investors. It is crucial for ED to hire and retain qualified professionals, otherwise there are delays and problems to the industry. The association would support last session's House Bill 655, streamlining the appeal process and eliminating de novo hearings. It sees problems with EIB and WQCC. The industry needs to know what the rules are up front. The New Mexico Mining Act is vague. It is very difficult for the mining industry to get insurance or surety bonds for reclamation. A discussion ensued on Chino Phelps-Dodge and on the negotiations and possible agreement between it and ED. ED updated the committee about the MolyCorp mine near Questa.

The committee recessed for lunch from 12:05 p.m. to 1:20 p.m.

Waste Isolation Pilot Project (WIPP) Trans-Uranic Waste Characterization

Dr. Ines Triay, WIPP manager, described the three waste regulators for WIPP, namely the EPA, the Nuclear Regulatory Commission and ED. She discussed the different kinds of waste and their associated risks. The experience gained since the opening of WIPP has shown that some tests that have been conducted are unnecessary. Dr. Triay went over her handout and explained U.S. Senate Bill 1424 relating to the characterization of waste, testing and limiting waste confirmation. WIPP will save around \$700 million by cutting down waste confirmation tests that are unnecessary and costly. Discussions took place about how WIPP waste should be tested at WIPP and not in Idaho, how the unnecessary transportation of waste causes more risk and the difficulty for ED in monitoring the waste within its jurisdiction.

Los Alamos National Laboratory (LANL)

Beverly Ramsey, Barbara Stine and Tori George went over various handouts and stated that safety, security and compliance are top priorities. LANL has a new director and a new organization, Environmental Management Services. Radioactive air emissions have been reduced to 20 percent of what they were in 1990 and pollution outfalls have been reduced by 85 percent. LANL is committed to working with ED and with New Mexico. LANL continues to examine and implement risk reduction strategies and to reduce waste production. It is committed to openness and transparency on public health issues. Dave McInroy stated that \$1.4 billion has been allocated for an environmental restoration project. So far, one-half of that money has been used and 400 acres have been transferred to Los Alamos County and remediated. Chris Del Signore went over his handout and discussed the waste disposition program and showed that much of what used to be below-grade transuranic waste is now above-grade transuranic waste. Tony Stanford explained the facility and the waste operations division and its duties. He also described how low-level waste is disposed of in pits in Area G, which is a category 2 nuclear facility. Ms. Ramsey described LANL's working relationship with ED on stream water, storm

water, monitoring of watershed and the Resource Conservation and Recovery Act (RCRA) permit. A draft permit should be finished in the fall of 2003. She briefly described the status of the lawsuit, how it is now in mediation and how they have gone through a series of stays that are still in effect. LANL is close to reaching an agreement with ED on a final order. After the lawsuit is over, LANL is expecting funds for cleanup. Discussions took place on procedures for spills and actions taken after the Cerro Grande fire.

New Mexico Department of Environment

James Bearzi, Sandra Martin and Charles Lundstrom presented ED's perspective on LANL. Mr. Bearzi went over his handout, explaining RCRA as it relates to LANL, the permitting process, timing and other RCRA issues. He stated that the lawsuit began in November 2002 when ED issued a Section 13 order under state law finding LANL guilty of imminent and substantial endangerment. Thereafter, the Department of Justice, EPA and the U.S. Department of Energy sued New Mexico. Six lawsuits were filed against the state; four were due to the Section 13 order and two were a response to another ED document put forth after the order. Now, there is a stay in the lawsuits until October 2003. ED has seven full-time positions to deal with LANL. The relationship is not bad but it is difficult as LANL and ED have different goals and focuses. A discussion ensued on secrecy and how ED is still struggling with the nature and extent of the problems at LANL. It is difficult to know what cleanup is required when the nature, extent and source of the problems are not known. The order issued by ED deals more with the nature and extent of the problems than it does with remediation. A discussion took place on Senate Bill 202, which amended the Hazardous Waste Act. ED is developing regulations in response to the passage of the bill. Ms. Ramsey spoke about the necessity of adequate staff in ED to understand the complexities at LANL and to make decisions. Ms. Ramsey and Mr. Bearzi agree that LANL is underfunded by the federal government compared with other federal facilities and with respect to environmental issues and cleanup. Committee members encouraged LANL and ED to continue mediation and to come to an agreement.

Adjournment

The meeting adjourned at 5:30 p.m.

**MINUTES
of the
SECOND MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**August 27-28, 2003
Room 322, State Capitol
Santa Fe**

The second meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative John A. Heaton, chair, at 9:35 a.m. in Room 322 at the State Capitol.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Don Kidd (August 27)
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan

Advisory Members

Rep. Thomas A. Anderson
Sen. Clinton D. Harden, Jr. (August 28)
Rep. Avon W. Wilson

Sen. William H. Payne
Sen. John Pinto

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Elizabeth Holmes

Guests

The guest list is in the meeting file.

Wednesday, August 27
Committee Business

Representative Heaton welcomed committee members and guests. Committee members introduced themselves. Representative Heaton invited Douglas Meiklejohn to speak.

Amigos Bravos and Mining Impact Communication Alliance

Francisco Apodaca stated that his and his staff's experience with the New Mexico Department of Environment (ED) has been good. ED is helpful and knowledgeable. The problems he sees are not at the staff level but at the decision-making and administrative levels, such as in negotiations with Phelps Dodge. He feels that a lot of decisions are politically driven and are not based on the best science as set out by the staff. A discussion ensued on the agreement between the state and Phelps Dodge.

Chaparral Community Health Council

Jean Garcia spoke on issues with the landfill permit in Chaparral granted by ED to Rhino Environmental Services, Inc. She discussed problems with ED's public hearing process and ED's apparent lack of concern for community and citizen input. Chaparral has three other landfills. She stated that Chaparral is a poor, minority community that is being discriminated against. Representative Lujan stated that he was present at part of the hearing complained about and agreed that citizen and community voices are not heard. Tracy Hughes, general counsel for ED, stated that ED does not have any rules on economic or community impacts and is required by law to grant permits as long as zoning and local laws allow. ED is looking for ways to change this. A discussion developed regarding environmental justice. Derrith Watchman-Moore, deputy secretary of ED, stated that the issue is being looked at nationally and in New Mexico. ED is beginning a study in October on stakeholder community groups and will have a national expert speak on environmental justice. After the study, recommendations for change in legislation may be made. Representative Heaton asked ED to address the Chaparral and Questa mine issues and submit a report to the committee.

Southwest Organizing Project

Robby Rodriguez discussed air quality issues related to Intel. He feels the air permit is not enforceable and that there are no emission limits. He stated that the community wants to participate and be included in the discussions and hearings but that ED stifles the process. Committee members questioned Mr. Rodriguez about the scientific basis, if any, for his claims on air emissions by Intel.

Blancett Ranches and Oil and Gas Accountability Project

Tweeti Blancett, a rancher, described the wealth of natural resources in New Mexico; for example, over \$2.4 billion in resources was extracted and exported from the northwestern part of the state. She stated that New Mexico has over 35,000 natural gas wells with compressors that are totally unregulated. These wells affect the watershed and cause erosion, air pollution and surface damage problems. Ranchers are coming together with environmentalists on oil and gas well issues. Many companies that drill gas are not local and are not regulated. Problems are starting to brew in this area. A discussion ensued on the nature of the relationship between states on environmental issues. The committee requested ED to provide a short brief on the nature of state-to-state relationships.

New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau and Dairy Producers of New Mexico

Caren Cowan of the New Mexico Cattle Growers' Association discussed ED hearings and the arduous task of the triennial review. Cecilia Abeyta of the New Mexico Farm and Livestock Bureau stated that the economic value of agriculture in New Mexico is \$3.51 billion. It is regulated for clean air and water and the bureau supports those regulations. Members of the bureau would like to participate in the process of developing regulations and making policy. Sharon Lombardi of the Dairy Producers of New Mexico discussed the economic impact of the dairy industry and described the various state agencies that regulate the industry. She described ED's regulation of dairy. Dairy producers would like to be involved in the process. It would be easier for the industry if state and federal regulations were combined into one process. A discussion took place on ground water regulations and water quality, on using manure as biomass and on streams. The committee requested ED to brief the stream issues.

New Mexico Cotton-Ginners' Association

Richie Wilson, president, and Ed Hughs, United States Department of Agriculture, provided an update on House Bill 192. They have been meeting with ED on regulations since the bill was signed into law and have had excellent cooperation. Some of the issues they are working with are: modeling, developing background information for the environmental improvement board (EIB) January meeting, demonstrating compliance with federal and state standards and addressing pollutant impacts from cotton gins.

New Mexico Oil and Gas Association (NMOGA) and Navajo Refining

Deborah Seligman, Louis Rose and another representative from NMOGA discussed how the association and its members are committed to protecting public health and the environment. Regulations and policies must consider industry input and identify goals while leaving the "how" to the industry. They discussed volatile organic compounds (VOCs), ozone level issues and the task force in northwestern New Mexico. They stated the industry's position on the VOC and ozone level issue, including the burdens on the industry. The association has had discussions with ED and believes it can work with ED to draft the right rules and policies. Phillip Youngblood of Navajo Refining supported the NMOGA. Navajo Refining is regulated by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department as well as ED. Its relationship with ED is good, much better than it was three or four years ago. Mr. Youngblood then gave a more detailed description of what Navajo Refining does, its interactions with the various bureaus in ED and its compliance with the consent decree. Some staff at ED are very qualified, others are not. If ED had more funding, it could recruit more qualified people. A discussion ensued on the need for better funding for ED so it can hire and retain technical staff and qualified people. Mr. Rose discussed with the committee the problem with the EIB and the Water Quality Control Commission (WQCC) having lay members who do not understand a lot of science and not having an independent scientific staff. They need to have more accountability. They are unpredictable. Also, the turnover problem at ED is expensive to the industry. Representative Heaton suggested that ED, the industry and the environmentalists each do a brief on this issue so the legislature can better understand the problems.

Committee Business

The committee approved the minutes of the last meeting and recessed for lunch from 12:25 p.m. to 1:45 p.m.

Municipal League and New Mexico Association of Counties

Dennis Holmberg, Lea County manager, discussed landfill issues and procedures. The county has a good relationship with ED. ED inspects on a regular basis and, due to its help, the county has a profitable landfill. ED has also helped with convenience centers. Les Montoya, San Miguel County manager and member of Sangre de Cristo Solid Waste Authority, described how ED helped with Mora County's solid waste system and stated that ED is fair and consistent and communicates well on compliance issues. He then described the problem of illegal dump sites on private property. Robert Gallegos, New Mexico Municipal Environmental Quality Association, described the five topics of immediate concern to the association, namely, the federal Safe Drinking Water Act, the new arsenic standard, public health security and bioterrorism, WQCC's standard for uranium and New Mexico operator certification. He went over his presentation as set out in the meeting file. Mark Turnbough of Waste Connections, Inc., helped chair the governor's transition team for ED. He described the transition process. The team found ED to be underfunded and understaffed and found problems with the office of general counsel. Things are starting to shape up. There is a big meeting of the entire department and problems are getting addressed. General counsel is more aggressive and is making decisions faster. The hearing process should be looked at more. A discussion ensued on the hearing process, problems in procedure and appeals and de novo hearings.

Intel Corporation

Barbara Brazil and Bill Westmoreland stated that Intel's primary interaction with ED is with the Air Quality Bureau. The process needs to be better identified and the timing needs to be predictable. ED is making progress in understanding the technical and complicated technology that Intel is involved in. A discussion took place on the types and amounts of chemicals released by Intel and how Intel can respond to the concerns of the community and be more transparent.

New Mexico Homebuilders' Association

Jack Milarch, executive vice president, discussed septic tank issues and how ED may be understaffed. The dedicated fund for septic tank issues does not seem to be applied there. ED needs to address and clean up old and noncompliant septic tank systems. The association has members who have put in long hours and worked with ED. Another issue is storm water runoff subjecting members of the association to fines from Texas-based U.S. Environmental Protection Agency (EPA) inspectors. They seem to be caught between overworked and understaffed ED and federal regulators with a bad attitude. Ken Smith, ED, stated that ED was expanding its septic tank program. ED was asked to respond as to whether earmarked funds are being used for the purpose created.

New Mexico Petroleum Marketers' Association

Rueben Baca, executive director, stated that ED regulates under- and above-ground storage tanks. It had a backlog but is catching up. A discussion took place on the underground storage tank inspection program.

SW Dry-Cleaning Association

Troy Bradley of Comet Cleaners gave some personal history and discussed how dry-cleaning chemicals are mixed. ED is professional, knowledgeable and handles things well. The association deals with the Air Quality Bureau. Smaller operations seem to have more problems with chemical use and disposal and may not be as inspected as the larger companies.

Recess

The committee recessed at 4:10 p.m.

Thursday, August 28

The committee reconvened at 9:05 a.m. in Room 317 at the State Capitol.

Association of Commerce and Industry

J.D. Bullington and Richard Virtue requested that House Bill 655, carried by Representative Heaton, be reintroduced to amend the Air Quality Act to eliminate the requirement of a second de novo hearing. A discussion on the bill, present procedures and costs ensued between Mr. Virtue, committee members, Secretary of Environment Ron Curry and Tracy Hughes, general counsel to ED. ED is willing to compromise and work with business and environmental groups. A second issue discussed by Mr. Virtue was conflict resolution before ED, especially when there is a change in policy or interpretation. Examples were given. An interim procedure is needed, perhaps an informal hearing or mediation. Mr. Virtue further suggested that the statute of limitations imposed on the Air Quality Act in 2001 should be applied to the Water Quality Act and the Hazardous Waste Act. ED is administratively recognizing a one-year limitation.

New Mexico Restaurant Association

Carol White, executive director, stated that members of her association work well with ED. ED is very professional but its employees are overworked and underpaid. Last session, the association supported a fee increase for ED. Three thousand restaurants are inspected across the state. A discussion took place on earmarked funds, bad cash management and how lack of adequate funding forces the department to use funds for other than their intended purpose. Rick Martinez, Administrative Services Division director, ED, explained problems with special funds and stated that there are around 50 vacant positions in ED due to lack of funding. ED needs general fund money to fill these positions and to match federal funding.

Update on Superfunds

George Schuman, ED, superfund program director, went over the handout describing the 12 superfunds in New Mexico, their causes, locations, progress of cleanup efforts and cleanup goals, processes and measurement. Discussions ensued on specific superfund sites, such as those in Espanola and Roswell, on dry-cleaning solvents and on liability of property owners. Mr. Schuman described the decrease in federal funding for superfund sites nationally. Representative Ponce moved to send letters on the superfund sites individually and as a

committee to congressional delegates. Senator Martinez seconded the motion. ED will draft the letters.

New Mexico Mining Association

Mike Bowen, executive director, stated that the mining industry is regulated in numerous ways by ED, including air, water, financial, waste, storage tanks and remediation, and is regulated by other agencies as well. Environmental regulation has a substantial economic impact on mining and requires hundreds of millions of dollars from investors. It is crucial for ED to hire and retain qualified professionals, otherwise there are delays and problems to the industry. The association would support last session's House Bill 655, streamlining the appeal process and eliminating de novo hearings. It sees problems with EIB and WQCC. The industry needs to know what the rules are up front. The New Mexico Mining Act is vague. It is very difficult for the mining industry to get insurance or surety bonds for reclamation. A discussion ensued on Chino Phelps-Dodge and on the negotiations and possible agreement between it and ED. ED updated the committee about the MolyCorp mine near Questa.

The committee recessed for lunch from 12:05 p.m. to 1:20 p.m.

Waste Isolation Pilot Project (WIPP) Trans-Uranic Waste Characterization

Dr. Ines Triay, WIPP manager, described the three waste regulators for WIPP, namely the EPA, the Nuclear Regulatory Commission and ED. She discussed the different kinds of waste and their associated risks. The experience gained since the opening of WIPP has shown that some tests that have been conducted are unnecessary. Dr. Triay went over her handout and explained U.S. Senate Bill 1424 relating to the characterization of waste, testing and limiting waste confirmation. WIPP will save around \$700 million by cutting down waste confirmation tests that are unnecessary and costly. Discussions took place about how WIPP waste should be tested at WIPP and not in Idaho, how the unnecessary transportation of waste causes more risk and the difficulty for ED in monitoring the waste within its jurisdiction.

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water, monitoring of watershed and the Resource Conservation and Recovery Act (RCRA) permit. A draft permit should be finished in the fall of 2003. She briefly described the status of the lawsuit, how it is now in mediation and how they have gone through a series of stays that are still in effect. LANL is close to reaching an agreement with ED on a final order. After the lawsuit is over, LANL is expecting funds for cleanup. Discussions took place on procedures for spills and actions taken after the Cerro Grande fire.

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Adjournment

The meeting adjourned at 5:30 p.m.

MINUTES
of the
FOURTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
November 14, 2003
Santa Fe

The fourth meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative John A. Heaton, chair, on November 14, 2003 at 10:10 a.m. in Room 311 at the State Capitol.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Carroll H. Leavell
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan
Sen. Don Kidd
Rep. Antonio Lujan

Advisory Members

Rep. Thomas A. Anderson

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Maha Khoury
Cenissa Martinez

Guests

The guest list is in the meeting file.

Committee Business

Chairman Heaton welcomed committee members and guests and invited Tracy Hughes, Department of Environment (ED) general counsel, to speak on discussion drafts of two proposed bills that would eliminate de novo hearings in the Air Quality Control Act and the Water Quality Act.

Proposal to Eliminate de Novo Hearings

Ms. Hughes described the negotiations between stakeholders on the de novo hearing issues. The groups agree that two hearings are not necessary. The problem is in the notice provisions. Richard Virtue, attorney and lobbyist for the Association of Commerce and Industry (ACI), indicated that ACI supports the two discussion drafts. The question is where the notice provisions should go — in the statutes or in regulations. ACI is concerned about putting detailed

notice requirements in the statutes. Douglas Meiklejohn, attorney and lobbyist for the Environmental Law Center and various communities, described how communities do not always receive notice of the first hearing by the department. The only notice given is published in the classified section of the newspaper and not read by most people. Communities rely on the second hearing because that is when they actually receive notice. Thus, community groups are opposed to eliminating the second de novo hearing. If adequate notice of the first hearing is provided, communities would not oppose eliminating the second hearing. Mr. Meiklejohn cited the Solid Waste Act and the mining acts as examples of detailed notice provisions and described the kinds of notice required under those acts. Mr. Virtue stated that such notice requirements could be problematic and are unnecessarily burdensome. Discussions ensued on whether the notice requirements should be in the statutes or in regulations, on the differences between state and federal requirements, and on the state register. The committee voted to endorse the two discussion drafts and accept any amendments on the notice issue if the stakeholders reach consensus.

Ambient Air Quality Study

Chairman Heaton explained the reasons why the study is necessary. Jim Norton, ED, also explained why the study is needed and how the department plans to conduct the study. There was no opposition to the appropriation for the study. The committee endorsed the bill.

Pipeline Safety Bill

Chairman Heaton explained that the intent of the bill is to enhance the pipeline safety program and improve safety. Pipelines are getting old, corroded and dangerous. The federal government is not doing a good job to ensure safety. The intent, at some point, is also to oversee interstate pipelines in the state. The federal government would pay one-half the cost for interstate oversight when New Mexico takes it over. Bruno Carrara, Pipeline Safety Bureau Chief, Public Regulation Commission (PRC), explained the fee amounts and structure in the bill. The intent of the fees is to completely fund the bureau and its duties under the law without taking money from the general fund. The industry has no problem with the amount of fees in the bill, only with some language. Public Service Company of New Mexico (PNM) has concerns as to how it will recover the costs. A discussion ensued as to whether PNM and others would be paying twice for the same fees. They are already paying for inspection and supervision. Mr. Carrara explained that inspection and supervision fees go to the general fund to support the utility division of PRC, not for pipeline safety. There are no fees being paid for pipeline inspection. The intent is to allow for an annual adjustment of the fees and to track what funds are necessary. The committee discussed how industry has a responsibility and should pay for the safety of pipelines. The fees should be earmarked for pipeline safety, not for administrative costs. A discussion ensued on administrative costs. Committee members agreed that they should be minimal. Chairman Heaton indicated that administrative duties sometimes overlap with pipeline oversight and that it is sometimes difficult to separate the two. The committee agreed to adopt the proposal if the bureau reviews the pipeline fees with the industry, if the funds are earmarked and if the fees charged are not more than what it takes to run the pipeline safety enterprise. The goal is for New Mexico to qualify for interstate pipeline oversight at some point

in the future. Committee members emphasized that there should be no double-charging the industry and that extra money in the fund should not be used for administrative purposes.

Committee Business

Chairman Heaton gave committee members an update on WIPP and the classification of waste. The minutes of the third meeting were approved.

Adjournment

The committee adjourned at 12:10 p.m.

Legislative Proposals

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL
ACT TO ELIMINATE DE NOVO HEARINGS TO THE ENVIRONMENTAL
IMPROVEMENT BOARD AND PROVIDE FOR REVIEW BY THE BOARD BASED ON
THE RECORD OF A PUBLIC HEARING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972,
Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement
board or the local board shall require:

(1) a person intending to construct or modify
any source, except as otherwise specifically provided by
regulation, to obtain a construction permit from the department

1 or the local agency prior to such construction or modification;
2 and

3 (2) a person intending to operate any source
4 for which an operating permit is required by the 1990
5 amendments to the federal act, except as otherwise specifically
6 provided by regulation, to obtain an operating permit from the
7 department or the local agency.

8 B. Regulations adopted by the environmental
9 improvement board or the local board shall include at least the
10 following provisions:

11 (1) requirements for the submission of
12 relevant information, including information the department or
13 the local agency deems necessary to determine that regulations
14 and standards under the Air Quality Control Act or the federal
15 act will not be violated;

16 (2) specification of the deadlines for
17 processing permit applications; provided the deadline for a
18 final decision by the department or the local agency on a
19 construction permit application may not exceed:

20 (a) ninety days after the application is
21 determined to be administratively complete, if the application
22 is not subject to requirements for prevention of significant
23 deterioration, unless the secretary or the director grants an
24 extension not to exceed ninety days for good cause, including
25 the need to have public hearings; or

1 (b) one hundred eighty days after the
2 application is determined to be administratively complete, if
3 the application is subject to requirements for prevention of
4 significant deterioration, unless the secretary or the director
5 grants an extension not to exceed ninety days for good cause,
6 including the need to have public hearings;

7 (3) that if the department or local agency
8 fails to take final action on a construction permit application
9 within the deadlines specified in Paragraph (2) of this
10 subsection, the department or local agency shall notify the
11 applicant in writing that an extension of time is required to
12 process the application and specify in detail the grounds for
13 the extension;

14 (4) a description of elements required before
15 the department or local agency shall deem an application
16 administratively complete;

17 (5) specification of the public notice and
18 comment period [~~and public hearing, if any~~] on a permit
19 application or draft permit required prior to the issuance of a
20 permit; provided that the permit regulations adopted:

21 (a) by the environmental improvement
22 board shall include provisions [~~governing notice to nearby~~
23 ~~states~~] that ensure that the public, adjacent landowners,
24 affected governmental agencies, area Indian nations, tribes or
25

1 pueblos and any other state whose air may be affected are
2 provided notice; and

3 (b) by any local board shall include
4 provisions requiring that notice be given to the department of
5 all permit applications by any source that emits, or has a
6 potential emission rate of, one hundred tons per year or more
7 of any regulated air contaminant, including any source of
8 fugitive emissions of each regulated air contaminant, at least
9 sixty days prior to the date on which construction or major
10 modification is to commence;

11 (6) an opportunity for a public hearing before
12 the department, at which all interested persons shall be given
13 a reasonable opportunity to submit evidence, data, views and
14 arguments orally or in writing on the application or draft
15 permit and to examine witnesses testifying at the hearing. The
16 hearing shall be recorded. Any person submitting evidence,
17 data, views or arguments shall be subject to examination at the
18 hearing;

19 [~~(6)~~] (7) a schedule of construction permit
20 fees sufficient to cover the reasonable costs of:

21 (a) reviewing and acting upon any
22 application for such permit; and

23 (b) implementing and enforcing the terms
24 and conditions of the permit, excluding any court costs or
25 other costs associated with an enforcement action;

1 [~~(7)~~] (8) a schedule of emission fees
2 consistent with the provisions of Section 502(b) (3) of the 1990
3 amendments to the federal act;

4 [~~(8)~~] (9) a method for accelerated permit
5 processing that may be requested at the sole discretion of the
6 applicant at the time the applicant submits a construction
7 permit application and that:

8 (a) allows the department or local
9 agency to contract with qualified outside firms to assist the
10 department or local agency in its accelerated review of the
11 construction permit application; provided that the department
12 or local agency can contract with a qualified firm that does
13 not have a conflict of interest; and

14 (b) establishes a process for the
15 department or local agency to account for the expenditure of
16 the accelerated permit processing fees;

17 [~~(9)~~] (10) allowance for additional permit
18 application fees, sufficient to cover the reasonable costs of
19 an accelerated permit application review process. Before the
20 applicant is notified that the permit application has been
21 determined to be complete, the department or local agency shall
22 give the applicant a reasonable estimate of costs of an
23 accelerated permit application review process;

24 [~~(10)~~] (11) specification of the maximum
25 length of time for which a permit shall be valid; provided that

1 for an operating permit such period may not exceed five years;
2 and

3 [~~(11)~~] (12) for an operating permit only:

4 (a) provisions consistent with Sections
5 502(b) and 505(b) of the federal act providing: 1) notice to
6 and review and comment by the United States environmental
7 protection agency; and 2) that if the department or local
8 agency receives notice of objection from the United States
9 environmental protection agency before the operating permit is
10 issued, the department or the local agency shall not issue the
11 permit unless it is revised and issued under Section 505(c) of
12 the federal act;

13 (b) provisions governing renewal of the
14 operating permit; and

15 (c) specification of the conditions
16 under which the operating permit may be terminated, modified or
17 revoked and reissued prior to the expiration of the term of the
18 operating permit.

19 C. Except as provided in Subsection [0] Q of this
20 section, the department or the local agency may deny any
21 application for:

22 (1) a construction permit if it appears that
23 the construction or modification:

24 (a) will not meet applicable standards,
25

1 rules or requirements of the Air Quality Control Act or the
2 federal act;

3 (b) will cause or contribute to air
4 contaminant levels in excess of a national or state standard
5 or, within the boundaries of a local authority, applicable
6 local ambient air quality standards; or

7 (c) will violate any other provision of
8 the Air Quality Control Act or the federal act; and

9 (2) an operating permit if the source will not
10 meet the applicable standards, rules or requirements pursuant
11 to the Air Quality Control Act or the federal act.

12 D. The department or the local agency may specify
13 conditions to any permit granted under this section, including:

14 (1) for a construction permit:

15 (a) a requirement that such source
16 install and operate control technology, determined on a case-
17 by-case basis, sufficient to meet the standards, rules and
18 requirements of the Air Quality Control Act and the federal
19 act;

20 (b) individual emission limits,
21 determined on a case-by-case basis, but only as restrictive as
22 necessary to meet the requirements of the Air Quality Control
23 Act and the federal act or the emission rate specified in the
24 permit application, whichever is more stringent;

1 (c) compliance with applicable federal
2 standards of performance;

3 (d) reasonable restrictions and
4 limitations not relating to emission limits or emission rates;
5 or

6 (e) any combination of the conditions
7 listed in this paragraph; and

8 (2) for an operating permit, terms and
9 conditions sufficient to ensure compliance with the applicable
10 standards, rules and requirements pursuant to the Air Quality
11 Control Act and the federal act.

12 E. This section does not authorize the department
13 or the local agency to require the use of machinery, devices or
14 equipment from a particular manufacturer if the federal
15 standards of performance, state regulations and permit
16 conditions may be met by machinery, devices or equipment
17 otherwise available.

18 F. The issuance of a permit does not relieve any
19 person from the responsibility of complying with the provisions
20 of the Air Quality Control Act and any applicable regulations
21 of the environmental improvement board or the local board. Any
22 conditions placed upon a permit by the department or the local
23 agency shall be enforceable to the same extent as a regulation
24 of its board.

1 G. A person who participated in a permitting action
2 before the department or the local agency shall be notified by
3 the department or the local agency of the action taken and the
4 reasons for the action. Notification of the applicant shall be
5 by certified mail.

6 H. A person who participated in a permitting action
7 before the department or the local agency and who is adversely
8 affected by such permitting action may file a petition for
9 ~~[hearing]~~ review before the environmental improvement board or
10 hearing before the local board. ~~[The petition shall be made in~~
11 ~~writing to the environmental improvement board or the local~~
12 ~~board within thirty days from the date notice is given of the~~
13 ~~department's or the local agency's action.]~~ Unless a timely
14 petition ~~[for hearing]~~ is made, the decision of the department
15 or the local agency shall be final and not subject to judicial
16 review. The petition shall:

17 (1) be made in writing to the environmental
18 improvement board or the local board within thirty days from
19 the date notice is given of the department's or the local
20 agency's action;

21 (2) include a statement of the issues to be
22 raised and the relief sought; and

23 (3) be served on all other persons submitting
24 evidence, data, views or arguments in the proceeding before the
25 department or the local agency.

1 I. If a timely petition [~~for hearing~~] is made, the
2 environmental improvement board or the local board shall [~~hold~~
3 ~~a hearing~~] consider the petition within sixty days after
4 receipt of the petition. The environmental improvement board
5 or the local board shall notify the petitioner and the
6 applicant or permittee, if other than the petitioner, by
7 certified mail of the date, time and place of the review or
8 hearing. [~~If the subject of the petition is a permitting~~
9 ~~action deemed by the environmental improvement board or the~~
10 ~~local board to substantially affect the public interest]~~ The
11 environmental improvement board or the local board shall ensure
12 that the public receives notice of the date, time and place of
13 the review or hearing. [~~The public in such circumstances shall~~
14 ~~also be given a reasonable opportunity to submit data, views or~~
15 ~~arguments orally or in writing and to examine witnesses~~
16 ~~testifying at the hearing. Any person submitting data, views~~
17 ~~or arguments orally or in writing shall be subject to~~
18 ~~examination at the hearing.~~

19 J. ~~The environmental improvement board or the local~~
20 ~~board may designate a hearing officer to take evidence in the~~
21 ~~hearing. All hearings shall be recorded.~~

22 K.] J. For review by the environmental improvement
23 board, the board shall review the record compiled before the
24 department, including the transcript of any public hearing held
25 on the application or draft permit, and shall allow any party

1 to submit arguments. The board may designate a hearing officer
2 to review the record and the arguments of the parties and
3 recommend a decision to the board. The board shall consider
4 and weigh only the evidence contained in the record before the
5 department and the recommended decision of the hearing officer,
6 if any, and shall not be bound by the factual findings or legal
7 conclusions of the department. The board shall keep a record
8 of the review. Based on the review of the evidence, the
9 arguments of the parties and the recommendation of the hearing
10 officer, if any, the board shall sustain, modify or reverse the
11 action of the department.

12 K. Prior to the date set for review, if the
13 environmental improvement board determines that proposed
14 additional evidence, data, views or arguments are relevant and
15 there was good reason for the failure to present the evidence,
16 data, views or arguments in the proceeding before the
17 department, the board shall order that additional evidence,
18 data, views or arguments be taken by the department. Based on
19 the additional evidence, data, views or arguments, the
20 department may revise the permitting action and shall promptly
21 file with the environmental improvement board the additional
22 evidence, data, views or arguments received and the action
23 taken.

24 L. For review by the local board, the board shall
25 hold a hearing on the petition. The local board may designate

1 a hearing officer to take evidence in the hearing and recommend
2 a decision to the board. All interested persons shall be given
3 a reasonable opportunity to submit evidence, data, views and
4 arguments orally or in writing, and to examine witnesses
5 testifying at the hearing. Any person submitting evidence,
6 data, views or arguments shall be subject to examination at the
7 hearing. All hearings shall be recorded. The burden of proof
8 shall be upon the petitioner. Based upon the evidence
9 presented at the hearing, ~~[the environmental improvement board~~
10 ~~or]~~ the local board shall sustain, modify or reverse the action
11 of ~~[the department or]~~ the local agency ~~[respectively]~~.

12 M. The environmental improvement board or the local
13 board shall notify the petitioner and all other participants in
14 the review of the action taken and the reasons for the action.

15 ~~[E.]~~ N. Notwithstanding any other provision of law
16 and subject to the provisions of Section 74-2-4 NMSA 1978, a
17 final decision on a permit by the department, the environmental
18 improvement board, the local agency, the local board or the
19 court of appeals that a source will or will not meet applicable
20 local, state and federal air pollution standards and
21 regulations shall be conclusive and is binding on every other
22 state agency and as an issue before any other state agency
23 shall be deemed resolved in accordance with that final
24 decision.

1 ~~[M-]~~ 0. Subject to the provisions of Section 74-2-4
2 NMSA 1978, if the local board has adopted a permit regulation
3 pursuant to this section, persons constructing or modifying any
4 source within the boundaries of the local authority shall
5 obtain a permit from the local agency and not from the
6 department.

7 ~~[N-]~~ P. Fees collected pursuant to this section
8 shall be deposited in:

9 (1) the state air quality permit fund created
10 by Section 74-2-15 NMSA 1978 if collected by the department; or

11 (2) a fund created pursuant to Section
12 74-2-16 NMSA 1978 if collected by a local agency pursuant to a
13 permit regulation adopted by the local board pursuant to this
14 section.

15 ~~[O-]~~ Q. The department may not deny an application
16 for a construction permit for a cotton gin if the applicant
17 proposes use of the best system of emissions reduction
18 currently in use by cotton gins in the United States, as
19 specified by regulation of the environmental improvement board,
20 and the cotton gin has a potential emission rate, considering
21 the use of the proposed emissions reduction system and the
22 proposed hours of operation, of not more than fifty tons per
23 year of any regulated air contaminant for which there is a
24 national ambient air quality standard. The construction permit
25 shall require that the applicant use the proposed emission

1 reduction system and limit the hours of operation to the hours
2 specified in the application. For purposes of this subsection,
3 "best system of emissions reduction" for cotton gins means a
4 system that will result in emissions reduction equal to or
5 greater than that obtained by the use of condenser screens,
6 seventy-mesh screen or equivalent on low-pressure exhausts and
7 high-efficiency cyclone dust collectors on high-pressure
8 exhausts. "

9 Section 2. Section 74-2-9 NMSA 1978 (being Laws 1971,
10 Chapter 57, Section 1, as amended) is amended to read:

11 "74-2-9. JUDICIAL REVIEW--ADMINISTRATIVE ACTIONS. --

12 A. Any person adversely affected by an
13 administrative action taken by the environmental improvement
14 board, the local board, the secretary or the director other
15 than the adoption of a regulation, may appeal to the district
16 court [of appeals] pursuant to the provisions of Section
17 39-3-1.1 NMSA 1978. All appeals shall be upon the record made
18 at the hearing and shall be taken to the district court [~~of~~
19 ~~appeals~~] within thirty days following the date of the action.

20 B. [~~For appeals of regulations, the date of the~~
21 ~~action shall be the date]~~ A person who is or may be adversely
22 affected by a regulation adopted by the environmental
23 improvement board or the local board may appeal the regulation
24 by filing a notice of appeal with the court of appeals within
25 thirty days of the filing of the regulation by the

1 environmental improvement board or the local board pursuant to
2 the State Rules Act.

3 C. Upon appeal pursuant to Subsection B of this
4 section, the court of appeals shall set aside the [~~action~~]
5 regulation only if found to be:

6 (1) arbitrary, capricious or an abuse of
7 discretion;

8 (2) not supported by substantial evidence in
9 the record; or

10 (3) otherwise not in accordance with law.

11 D. After a hearing and a showing of good cause by
12 the appellant, a stay of the action being appealed may be
13 granted:

14 (1) by the environmental improvement board,
15 the local board, the [~~department~~] secretary or the [~~local~~
16 ~~agency~~] director, whichever took the action being appealed; or

17 (2) by the court [~~of appeals~~] if the
18 environmental improvement board, the local board, the
19 [~~department~~] secretary or the [~~local agency~~] director denies a
20 stay or fails to act upon an application for a stay within
21 sixty days after receipt of the application. "

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WATER QUALITY ACT TO
ELIMINATE DE NOVO HEARINGS TO THE WATER QUALITY CONTROL
COMMISSION AND PROVIDE FOR REVIEW BY THE COMMISSION BASED ON
THE RECORD OF A PUBLIC HEARING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-6-5 NMSA 1978 (being Laws 1973,
Chapter 326, Section 4, as amended) is amended to read:

"74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

A. By regulation, the commission may require
persons to obtain from a constituent agency designated by the
commission a permit for the discharge of any water contaminant
or for the disposal or reuse of septage or sludge.

B. The commission shall adopt regulations
establishing procedures for certifying federal water quality
permits.

1 C. Prior to the issuance of a permit, the
2 constituent agency may require the submission of plans,
3 specifications and other relevant information that it deems
4 necessary.

5 D. The commission shall by regulation set the dates
6 upon which applications for permits shall be filed and
7 designate the time periods within which the constituent agency
8 shall, after the filing of an administratively complete
9 application for a permit, either grant the permit, grant the
10 permit subject to conditions or deny the permit.

11 E. The constituent agency shall deny any
12 application for a permit or deny the certification of a federal
13 water quality permit if:

14 (1) the effluent would not meet applicable
15 state or federal effluent regulations, standards of performance
16 or limitations;

17 (2) any provision of the Water Quality Act
18 would be violated;

19 (3) the discharge would cause or contribute to
20 water contaminant levels in excess of any state or federal
21 standard. Determination of the discharges' effect on ground
22 water shall be measured at any place of withdrawal of water for
23 present or reasonably foreseeable future use. Determination of
24 the discharges' effect on surface waters shall be measured at
25 the point of discharge; or

1 (4) the applicant has, within the ten years
2 immediately preceding the date of submission of the permit
3 application:

4 (a) knowingly misrepresented a material
5 fact in an application for a permit;

6 (b) refused or failed to disclose any
7 information required under the Water Quality Act;

8 (c) been convicted of a felony or other
9 crime involving moral turpitude;

10 (d) been convicted of a felony in any
11 court for any crime defined by state or federal law as being a
12 restraint of trade, price-fixing, bribery or fraud;

13 (e) exhibited a history of willful
14 disregard for environmental laws of any state or the United
15 States; or

16 (f) had an environmental permit revoked
17 or permanently suspended for cause under any environmental laws
18 of any state or the United States.

19 F. The commission shall by regulation develop
20 procedures that ensure that the public, adjacent landowners,
21 affected governmental agencies, Indian nations, tribes or
22 pueblos and any other state whose water may be affected shall
23 receive notice of each application for issuance or modification
24 of a permit and any public hearing on the application. No
25 ruling shall be made on any application for a permit without

1 opportunity for a public hearing at which all interested
2 persons shall be given a reasonable chance to submit evidence,
3 data, views or arguments on the application or draft permit
4 orally or in writing and to examine witnesses testifying at the
5 hearing. The hearing shall be recorded. Any person submitting
6 evidence, data, views or arguments shall be subject to
7 examination at the hearing.

8 G. The commission may adopt regulations for the
9 operation and maintenance of the permitted facility, including
10 requirements, as may be necessary or desirable, that relate to
11 continuity of operation, personnel training and financial
12 responsibility, including financial responsibility for
13 corrective action.

14 H. Permits shall be issued for fixed terms not to
15 exceed five years, except that for new discharges, the term of
16 the permit shall commence on the date the discharge begins, but
17 in no event shall the term of the permit exceed seven years
18 from the date the permit was issued.

19 I. By regulation, the commission may impose
20 reasonable conditions upon permits requiring permittees to:

21 (1) install, use and maintain effluent
22 monitoring devices;

23 (2) sample effluents and receiving waters for
24 any known or suspected water contaminants in accordance with
25

1 methods and at locations and intervals as may be prescribed by
2 the commission;

3 (3) establish and maintain records of the
4 nature and amounts of effluents and the performance of effluent
5 control devices;

6 (4) provide any other information relating to
7 the discharge or direct or indirect release of water
8 contaminants; and

9 (5) notify a constituent agency of the
10 introduction of new water contaminants from a new source and of
11 a substantial change in volume or character of water
12 contaminants being introduced from sources in existence at the
13 time of the issuance of the permit.

14 J. The commission shall provide by regulation a
15 schedule of fees for permits, not exceeding the estimated cost
16 of investigation and issuance, modification and renewal of
17 permits. Fees collected pursuant to this section shall be
18 deposited in the water quality management fund.

19 K. The issuance of a permit does not relieve any
20 person from the responsibility of complying with the provisions
21 of the Water Quality Act, any applicable regulations or water
22 quality standards of the commission or any applicable federal
23 laws, regulations or standards.

1 L. A permit may be terminated or modified by the
2 constituent agency that issued the permit prior to its date of
3 expiration for any of the following causes:

- 4 (1) violation of any condition of the permit;
5 (2) obtaining the permit by misrepresentation
6 or failure to disclose fully all relevant facts;
7 (3) violation of any provisions of the Water
8 Quality Act or any applicable regulations, standard of
9 performance or water quality standards;
10 (4) violation of any applicable state or
11 federal effluent regulations or limitations; or
12 (5) change in any condition that requires
13 either a temporary or permanent reduction or elimination of the
14 permitted discharge.

15 M. If the constituent agency denies, terminates or
16 modifies a permit or grants a permit subject to condition, the
17 constituent agency shall notify the applicant or permittee by
18 certified mail of the action taken and the reasons.

19 N. A person who participated in a permitting action
20 before a constituent agency or a person affected by a
21 certification of a federal permit and who is adversely affected
22 by such permitting action or certification may file a petition
23 for review before the commission. ~~[The petition shall be made~~
24 ~~in writing to the commission within thirty days from the date~~
25 ~~notice is given of the constituent agency's action.]~~ Unless a

1 timely petition for review is made, the decision of the
2 constituent agency shall be final and not subject to judicial
3 review. The petition shall:

4 (1) be made in writing to the commission
5 within thirty days from the date notice is given of the
6 constituent agency's action;

7 (2) include a statement of the issues to be
8 raised and the relief sought; and

9 (3) be served on all other persons submitting
10 evidence, data, views or arguments in the proceeding before the
11 constituent agency.

12 0. If a timely petition for review is made, the
13 commission shall ~~[hold a hearing]~~ consider the petition within
14 ninety days after receipt of the petition. The commission
15 shall notify the petitioner and the applicant or permittee if
16 other than the petitioner by certified mail of the date, time
17 and place of the ~~[hearing. If the commission deems the action~~
18 ~~that is the subject of the petition to be affected with~~
19 ~~substantial public interest, it]~~ review. If the petitioner is
20 not the applicant or permittee, the applicant or permittee
21 shall be a party to the proceeding. The commission shall
22 ensure that [the public] a person who submitted evidence, data,
23 views or arguments before the constituent agency receives
24 notice of the date, time and place of the [hearing and is given
25 a reasonable chance to submit data, views or arguments orally

1 ~~or in writing and to examine witnesses testifying at the~~
2 ~~hearing. A person submitting data, views or arguments orally~~
3 ~~or in writing shall be subject to examination at the hearing.~~
4 ~~In the hearing, the burden of proof shall be upon the~~
5 ~~petitioner. The commission may designate a hearing officer to~~
6 ~~take evidence in the hearing. Based upon the evidence~~
7 ~~presented at the hearing, the commission shall sustain, modify~~
8 ~~or reverse the action of the constituent agency]~~ review.

9 [P. ~~If the petitioner requests, the hearing shall~~
10 ~~be recorded at the cost of the petitioner. Unless the~~
11 ~~petitioner requests that the hearing be recorded, the decision~~
12 ~~of the commission shall be final.~~]

13 P. The commission shall review the record compiled
14 before the constituent agency, including the transcript of any
15 public hearing held on the application or draft permit, and
16 shall allow any party to submit arguments. The commission may
17 designate a hearing officer to review the record and the
18 arguments of the parties and recommend a decision to the
19 commission. The commission shall consider and weigh only the
20 evidence contained in the record before the constituent agency
21 and the recommended decision of the hearing officer, if any,
22 and shall not be bound by the factual findings or legal
23 conclusions of the constituent agency. Based on the review of
24 the evidence, the arguments of the parties and recommendations
25 of the hearing officer, the commission shall sustain, modify or

1 reverse the action of the constituent agency. The commission
2 shall keep a record of the review.

3 Q. Prior to the date set for review, if the
4 commission determines that proposed additional evidence, data,
5 views or arguments are relevant and that there was good reason
6 for the failure to present the evidence, data, views or
7 arguments in the proceeding before the constituent agency, the
8 commission shall order that additional evidence, data, views or
9 arguments be taken by the constituent agency. Based on the
10 additional evidence, data, views or arguments, the constituent
11 agency may revise the permitting action or certification and
12 shall promptly file with the commission the additional
13 evidence, data, views or arguments received and the action
14 taken.

15 R. The commission shall notify the petitioner and
16 all other participants in the review proceeding of the action
17 taken by the commission and the reasons for that action."

18 Section 2. Section 74-6-7 NMSA 1978 (being Laws 1967,
19 Chapter 190, Section 6, as amended) is amended to read:

20 "74-6-7. ADMINISTRATIVE ACTION-- JUDICIAL REVIEW. --

21 A. Except as otherwise provided in the Water
22 Quality Act, a person who is adversely affected [~~by a~~
23 ~~regulation adopted by the commission or~~] by a compliance order
24 approved by the commission or who participated in a permitting
25 action or appeal of a certification before the commission and

1 who is adversely affected by such action may appeal to the
2 district court ~~[of appeals]~~ for further relief pursuant to the
3 provisions of Section 39-3-1.1 NMSA 1978. All such appeals
4 shall be upon the record made before the commission and shall
5 be taken to the district court ~~[of appeals]~~ within thirty days
6 after the ~~[regulation]~~ compliance order, permitting action or
7 certification that is being appealed occurred. ~~[If an appeal~~
8 ~~of a regulation is made, then the date of the commission's~~
9 ~~action shall be the date of the filing of the regulation under~~
10 ~~the State Rules Act.]~~

11 B. A person who is or may be adversely affected by
12 a regulation adopted by the commission may appeal the
13 regulation by filing a notice of appeal with the court of
14 appeals within thirty days of the filing of the regulation by
15 the commission pursuant to the State Rules Act.

16 ~~[B.]~~ C. Upon appeal, the court of appeals shall set
17 aside the ~~[commission's action]~~ regulation only if it is found
18 to be:

- 19 (1) arbitrary, capricious or an abuse of
20 discretion;
21 (2) not supported by substantial evidence in
22 the record; or
23 (3) otherwise not in accordance with law.

24 ~~[C.]~~ D. After a hearing and a showing of good cause
25 by the appellant, a stay of the action being appealed may be

1 granted pending the outcome of the judicial review. The stay
2 of the action may be granted by the commission or by the court
3 [~~of appeals~~] if the commission denies a stay or fails to act
4 upon an application for a stay within ninety days after receipt
5 of the application. "

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO STUDY STATE AMBIENT AIR QUALITY
STANDARDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four hundred thousand dollars
(\$400,000) is appropriated from the general fund to the
department of environment for expenditure in fiscal years 2005
and 2006 to study state ambient air quality standards. Any
unexpended or unencumbered balance remaining at the end of
fiscal year 2006 shall revert to the general fund.

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SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO PIPELINES; CREATING THE PIPELINE SAFETY FUND;
AUTHORIZING THE IMPOSITION OF PIPELINE SAFETY INSPECTION FEES
BY THE PUBLIC REGULATION COMMISSION; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Pipeline Safety Act is
enacted to read:

" [NEW MATERIAL] PIPELINE SAFETY FUND--CREATED--ASSESSMENT
AND COLLECTION OF FEES. --

A. The "pipeline safety fund" is created in the
state treasury to be administered by the commission. Income
from the fund shall be credited to the fund. Balances in the
fund shall not revert to the general fund at the end of any
fiscal year.

1 B. All balances in the pipeline safety fund are
2 appropriated to the commission for the purpose of enhancing
3 pipeline safety and carrying out its duties pursuant to the
4 provisions of the Pipeline Safety Act and Chapter 62, Article
5 14 NMSA 1978.

6 C. All money received by the commission pursuant to
7 Subsection E of this section shall be deposited in the pipeline
8 safety fund.

9 D. Payments from the pipeline safety fund shall be
10 made upon vouchers issued and signed by the director of the
11 administrative services division of the commission or the
12 director's authorized representative upon warrants drawn by the
13 secretary of finance and administration.

14 E. The commission shall collect fees from persons
15 subject to the Pipeline Safety Act in accordance with and not
16 to exceed the following amounts:

17 (1) for the transportation of gas:

18 (a) two dollars (\$2.00) per service
19 line;

20 (b) thirty-five dollars (\$35.00) per
21 mile of gathering line, transmission line or distribution main,
22 with a minimum assessment of four hundred dollars (\$400); and

23 (c) one hundred dollars (\$100) per
24 master meter, direct sales lateral or petroleum gas system; and
25

1 (2) for the transportation of oil, thirty-five
2 dollars (\$35.00) per mile of transmission line, with a minimum
3 assessment of four hundred dollars (\$400).

4 F. The commission shall annually adjust the fee
5 rates authorized by Subsection E of this section in order to
6 collect only that amount estimated to be necessary to carry out
7 the provisions of the Pipeline Safety Act and Chapter 62,
8 Article 14 NMSA 1978. "

9 Section 2. APPROPRIATION. --Six hundred twenty-five
10 thousand dollars (\$625,000) is appropriated from the general
11 fund to the pipeline safety fund for expenditure in fiscal year
12 2005 to carry out the safety, inspection and enforcement
13 provisions of the Pipeline Safety Act and Chapter 62, Article
14 14 NMSA 1978. Any unexpended or unencumbered balance remaining
15 at the end of fiscal year 2005 shall not revert to the general
16 fund.